

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TOREY J ZIMMERMAN
Claimant

APPEAL 21A-UI-01691-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GODBERSEN-SMITH CONST CO
Employer

**OC: 02/09/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Torey J Zimmerman, the claimant/appellant, filed an appeal from the March 5, 2020, (reference 01) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 23, 2020. Mr. Zimmerman participated and testified. The employer participated through Daniel Skirvin. Official notice was taken of the administrative record.

ISSUES:

Did Mr. Zimmerman file his appeal on time?

Was Mr. Zimmerman laid off, discharged for misconduct or did he voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Zimmerman at the correct address on March 5, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 15, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. March 15, 2020 was a Sunday; therefore, the deadline was extended to Monday, March 16, 2020. Mr. Zimmerman did not receive the decision. Mr. Zimmerman called Iowa Workforce Development in mid-November and learned that he had been denied benefits. Mr. Zimmerman appealed the decision online on December 22, 2020. The appeal was received by Iowa Workforce Development on December 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Zimmerman's appeal was not filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Mr. Zimmerman did not receive the decision in the mail and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Mr. Zimmerman learned that he had been denied benefits in mid-November. However, he did not appeal until at least a month after he learned this information. Mr. Zimmerman's delay after mid-November was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Mr. Zimmerman's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Mr. Zimmerman's appeal was not filed on time. The March 5, 2020, (reference 01) unemployment insurance decision is affirmed.



Daniel Zeno
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March 3, 2021
Decision Dated and Mailed

dz/kmj